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Committee on Economic, Social and Cultural Rights

Concluding observations on the sixth periodic report of the Netherlands*

1. The Committee on Economic, Social and Cultural Rights considered the sixth periodic report of the Netherlands (E/C.12/NLD/6) at its 18th and 19th meetings (E/C.12/2017/SR.18 and E/C.12/2017/SR.19) held on 1 and 2 June 2017, and adopted the following concluding observations at its 47th meeting, held on 23 June 2017.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of the State party and the submission of the written replies to the list of issues (E/C.12/NLD/Q/6/Add.1). The Committee also welcomes the constructive dialogue held with the interministerial delegation of the State party, including representatives from the constituent countries, Aruba, Curaçao and Sint Maarten.

B. Positive aspects

3. The Committee welcomes the ratification of the following human rights conventions:

(a) Convention on the Rights of Persons with Disabilities in 2016;

(b) International Convention for the Protection of all Persons from Enforced Disappearance in 2011;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010.

4. The Committee welcomes the legislative, institutional and policy measures taken to promote economic, social and cultural rights in the State party, including:

(a) The establishment of the Netherlands Institute for Human Rights in 2012;

(b) The adoption of a national action plan on human rights in 2013 and the national action plan on business and human rights in 2014;

(c) The Participation Act in 2015, the Jobs and Jobs Quotas Act in 2014 and the Appropriate Education Act in 2014;

(d) The Mandatory Reporting Code Act in 2013;

(e) The abolishment of the *Aliens* extended asylum procedure;

(f) The Compulsory Education Act in Aruba in 2012;

* Adopted by the Committee on Economic, Social and Cultural Rights at its sixty-first session (29 May–23 June 2017).

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(g) The introduction of free primary and secondary education in Curaçao in 2012;

(h) Amendments to the Civil Code, the Criminal Code and the Substantive Public Service Law Ordinance in Curaçao in 2014, easing restrictions on the right of public servants to strike and the removal of the ban on strikes by public servants in the revised Criminal Code of Aruba in 2014;

(i) The introduction of human trafficking as a criminal offence in the Criminal Code of Curaçao in 2011.

C. Principal subjects of concern and recommendations

Justiciability of the Covenant

5. The Committee is concerned that although international treaties that are binding on all persons prevail over domestic legislation in the Constitution of the Netherlands (arts. 93 and 94), the State party has taken the view that in general the provisions of the Covenant are not binding on all persons and that they are of a programmatic nature and therefore not justiciable. The Committee remains concerned that the Covenant does not play a meaningful role in the legislative or policy formulation processes of the State party and that major reforms in the field of social services have been adopted without taking the Covenant into account (art. 2).

6. **Recalling its previous recommendation (see E/C.12/NLD/CO/4-5, para. 6), the Committee urges the State party to fully incorporate the Covenant rights into its domestic legal order and to ensure their application in the legislative and policy formulation process. In that context, the Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.**

National action plans on human rights

7. The Committee notes with appreciation the adoption of the national action plan on human rights in the Netherlands. It regrets, however, that the plan does not contain concrete strategies and targets for line ministries and local governments. The Committee further regrets the absence of national action plans for human rights for Aruba, Curaçao and Sint Maarten.

8. **The Committee recommends that the State party set specific targets and develop strategies for all line ministries and all levels of government to implement the national action plan on human rights in close consultation with all relevant stakeholders, including civil society and the Netherlands Institute for Human Rights. The Committee further recommends that the State party adopt national action plans on human rights for all its constituent parts.**

International development cooperation

9. The Committee expresses concern over the decline in the level of the State party's official development assistance, which fell below the internationally agreed commitment of 0.7 per cent of gross national income (GNI) in 2013 and has continued to decrease. It is also concerned that human rights impact assessments are not systematically carried out (art. 2 (1)).

10. **The Committee calls upon the State party to progressively increase its official development assistance to 0.7 per cent of GNI and to pursue a human rights-based approach, including human rights impact assessments, in its development cooperation policy.**

Business and economic, social and cultural rights

11. The Committee welcomes the adoption of the national action plan on business and human rights in 2014. The Committee regrets however that the plan only contains guidelines primarily for Dutch companies operating abroad and that it does not provide for formal monitoring mechanisms. The Committee is also concerned at reports of damage to

people's homes in Groningen due to gas extraction and the polluting oil refinery in Curaçao. The Committee is further concerned at reports of serious damage to the environment and to the livelihoods of indigenous peoples caused in Peru by a company domiciled in the State party (arts. 2 (1) and 11).

12 **The Committee recommends that the State party:**

(a) **Include a formal monitoring mechanism in the national action plan on business and human rights;**

(b) **Take measures to ensure compliance with human rights obligations for companies operating on the territory of the State party;**

(c) **Take measures to ensure the physical safety and mental health of the people residing in the area of gas extraction in Groningen and the security and safety of their homes, provide proper compensation to the victims and prevent future occurrences of damages related to gas extraction;**

(d) **Expedite an overhaul of the oil refinery industry in Curaçao with a view to averting pollution;**

(e) **Remove the legal and practical obstacles to holding companies domiciled under the State party's jurisdiction accountable for violations of economic, social and cultural rights, resulting from their operations on the national territory or abroad.**

13 **The Committee refers the State party to its general comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.**

Disparities of implementation of the Covenant in the different parts of the State party

14 While noting the complex structure of the State party, with autonomous countries in Aruba, Curaçao and Sint Maarten and its devolved responsibility with regard to the special municipalities of Bonaire, Sint Eustatius and Saba, the Committee is concerned about the disparities in the implementation of the Covenant in the different countries of the State party, as well as between the European and the Caribbean Netherlands (art. 2).

15 **In line with its previous recommendation (see E/C.12/NLD/CO/4-5, para. 8), the Committee reminds the State party of its ultimate responsibility for the implementation of the Covenant in all its constituent countries and special municipalities and recommends that the State party take all necessary measures to ensure the full enjoyment of economic, social and cultural rights by all persons under its jurisdiction.**

Devolution of powers

16 The Committee notes an increased devolution in the powers for the design and delivery of social services to the municipal level since 2015. The Committee is, however, concerned about the insufficient capacity of some local authorities to provide social services and their limited expertise in this respect (art. 2).

17 **The Committee reminds the State party that it bears responsibility for the implementation of the Covenant at all levels, including at the municipal level. The Committee recommends that the State party ensure that all public authorities, including local authorities, are fully aware of their obligations under the Covenant and to that end encourages the State party to issue and disseminate the necessary information and guidance to local authorities so that they can provide adequate and affordable social services to people in their localities. The Committee further recommends that the State party provide all necessary support, including budgetary support, to the municipalities to enable them to ensure realization of the Covenant rights at the local level. The Committee refers to its general comment No. 3 (1990) on the nature of States parties' obligations.**

Discrimination against minorities

18. The Committee is concerned that various groups, including ethnic minorities, migrants, persons with disabilities, domestic workers, lesbian, gay, bisexual, transgender and intersex persons, refugees and asylum seekers, face de facto discrimination in the State party in many areas covered by the Covenant, including employment, social security, education, housing and standard of living (art. 2 (1)).

19. **The Committee recommends that the State party continue to assess the root causes of systemic and structural discrimination against minority groups. The Committee also recommends that the State party benefit from available findings in studies on discrimination in order to develop policies and programmes with specific goals and targets aimed at combating prejudice. The Committee further recommends that the State party take all necessary measures, including temporary special measures as appropriate, to ensure the equal enjoyment of the Covenant rights by all. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Human rights education

20. The Committee is concerned that the existing citizenship education in the national school curricula does not provide adequate human rights education, in particular on economic, social and cultural rights (arts. 2 (2) and 13).

21. **The Committee reiterates its previous recommendation (see E/C.12/NLD/CO/4-5, para. 32) and recommends that the State party ensure, as a matter of priority, that human rights education is provided in schools at all levels and universities, and that it covers economic, social and cultural rights.**

Equality between men and women

22. While appreciating the comprehensive data provided by the State party related to women's participation, the Committee is concerned at the large number of women working part-time, which is considerably higher than the European Union average, the low number of women in decision-making positions, in particular women mayors, and the low percentage of women on company boards of directors. The Committee is further concerned about the significant gender pay gap, particularly in the private sector. The Committee is also concerned about the persistence of stereotypes regarding childcare and the roles of women and men in family and society (arts. 3 and 7).

23. **The Committee recommends that the State party step up its efforts to achieve substantive equality between men and women. In that regard, it recommends that the State party:**

(a) **Take measures to ensure the economic independence of women by promoting their access to full-time work, including by investing more in childcare and other family support services;**

(b) **Intensify its efforts to increase the level of representation of women in decision-making positions, in particular the number of women mayors and as members of company boards of directors;**

(c) **Step up its efforts to change the perception by society of stereotyped gender roles, including through awareness-raising campaigns on equal career opportunities and equal sharing of family responsibilities between men and women;**

(d) **Take additional temporary special measures to achieve gender equality in all areas of economic, social and cultural rights.**

24. **The Committee refers the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.**

Unemployment

25. While appreciating the low unemployment rate in the State party, the Committee is concerned that the unemployment rate for ethnic minorities remains high and continues to rise, despite significant educational achievements on their part. The Committee also regrets that although the participation of women in the labour market has improved, the employment rate among women from ethnic minorities, in particular Turkish and Moroccan women, continues to be low (arts. 6 and 7).

26. **The Committee recommends that the State party step up its efforts to effectively address unemployment among ethnic minorities, in particular Turkish and Moroccan women, by implementing programmes and plans with the aim of fully integrating all groups of society into the labour market. It draws the State party's attention to its general comment No. 18 (2005) on the right to work.**

Right to work for persons with disabilities

27. While noting that, according to the Participation Act and the Jobs and Jobs Quota Act, in 2015 the interim targets to employ persons with disabilities were met, the Committee is concerned that some persons with disabilities are excluded from the system, as only those registered may benefit from the quota system. The Committee is further concerned that, despite the measures taken, the unemployment rate among persons with disabilities is almost twice as high as among persons without a disability and that persons with disabilities often work at levels below their qualifications (arts. 2 and 6).

28. **The Committee recommends that the State party carefully examine the impact of the Jobs and Jobs Quota Act on the situation of persons with disabilities who do not fall within the defined target group. The Committee requests the State party to provide information in its next periodic report on the employment level of persons within and outside the target group of the Jobs and Jobs Quota Act and on measures taken with regard to persons outside the target group. The Committee further requests information on the persons in the target group who have been offered a permanent contract after two years' employment, disaggregated by sex, age and level of education.**

Domestic and migrant workers

29. While the Committee notes the measures taken by the State party to improve the situation of domestic workers, it remains concerned that they still do not enjoy all their economic, social and cultural rights. The Committee is also concerned that employers do not always pay the required social security contributions. The Committee is further concerned that labour inspectors have the dual responsibilities of controlling not only working conditions but also the observance of legislation relating to the stay of foreign workers on the territory and related fraud, which may prevent migrant workers from reporting labour misconduct (art. 7).

30. **The Committee recommends that the State party take immediate action to ensure the effective protection of all workers in the labour market, including domestic workers and migrant workers, in accordance with the Covenant. The Committee further invites the State party to reconsider the dual responsibilities entrusted to labour inspectors, with a view to ensuring access to effective remedies for all workers subject to unjust or unfavourable labour conditions. The Committee refers the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Social security

31. The Committee is concerned about the adverse impact of the recent amendments to various social security laws on access by rights holders to adequate benefits due, among other reasons, to the nature and rigidity of the qualifying criteria. The Committee is also concerned that some municipalities do not have the capacity to support persons and families who are in need as a result of the decrease in the amount of their social security benefits (art. 9).

32. **The Committee calls upon the State party to review the entitlement conditions for social security benefits with a view to ensuring the effective protection of all beneficiaries. The Committee requests the State party to take measures to enable municipalities to provide adequate support to all those affected by the decrease in the amounts of their social security benefits as a result of recent legislative amendments. The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.**

Domestic violence and child abuse

33. The Committee is concerned that domestic violence and child abuse, despite the measures taken, remains pervasive in all the constituent parts of the State party. The Committee is further concerned that the devolution of responsibility for preventing domestic violence to municipalities in the Netherlands has not been accompanied by a commensurate increase in capacity. As a result, there is an unreasonable delay in many municipalities for victims of domestic violence to get access to the services provided by "Safe at Home" centres. The Committee is further concerned that the criteria for access to shelters are restrictive, limiting the access of victims. While the Committee notes the intention of the State party to conclude an agreement with the authorities in Aruba, Curaçao and Sint Maarten to strengthen policies on combating domestic violence, it remains concerned at the continued absence of reliable data for those territories in this field (art. 10).

34. **The Committee recommends that the State party redouble its efforts to combat domestic violence and child abuse. In that regard, it calls upon the State party to:**

(a) **Put in place mechanisms to monitor the capacity of municipalities, adjust eligibility criteria to the needs of victims and ensure victims have access to quality services in all part of the Netherlands;**

(b) **Take immediate measures, together with local authorities, to strengthen efforts to combat domestic violence and child abuse in Aruba, Curaçao and Sint Maarten and to ensure adequate funding, resources and staffing for that purpose;**

(c) **Submit up-to-date disaggregated data in its next periodic report, with information from all the constituent parts of the State party on the number and nature of reported cases of domestic violence, on convictions and sanctions imposed on perpetrators and on any assistance and rehabilitation measures provided to victims, in accordance with the Committee's previous recommendation (see E/C.12/NLD/CO/4-5, para. 21).**

Parental leave

35. Despite the recent plan to increase paternity leave for men from two to five days, the Committee is concerned that the present modalities of parental leave have not resulted in the increased participation of men in sharing responsibility for childcare (art. 10).

36. **The Committee recommends that the State party review the system of parental leave and modify it, with a view to enabling men and women to reconcile their work and family lives, including through conducting awareness-raising campaigns throughout the State party.**

Poverty

37. The Committee is concerned that the number of people who live at risk of poverty for a period of four years or more continues to rise. The Committee is further concerned at the prevalence of poverty in Aruba, Curaçao and Sint Maarten and regrets that the absence of reliable data, including official poverty measurement tools, in those constituent countries prevents it from accurately assessing the situation during the reporting period (art. 11).

38. **The Committee urges the State party to step up efforts to combat poverty and to develop official measurement tools in line with its previous recommendations (see E/C.12/NLD/CO/4-5, para. 24). The Committee further requests that in its next periodic report the State party provide disaggregated and comparative annually**

collected data on the number of individuals and households living in poverty and on the progress made in combating poverty.

Undocumented migrants

39. The Committee is concerned that restrictive provisions in, inter alia, the Benefit Entitlement Act, which links access to housing, education and welfare benefits to legal residency status, have contributed to a precarious situation for undocumented migrants and rejected asylum seekers in the State party. The Committee is further concerned that access to food, water and housing are not guaranteed under the Act. The Committee also notes with concern that the Government has made access to housing for undocumented migrants conditional upon a "demonstrated willingness to return to the country of origin" and that it has threatened to sanction municipalities that continue to provide shelter to undocumented migrants (arts. 2 and 11).

40. **Reiterating its previous recommendation (see E/C.12/NLD/CO/4-5, para. 25), the Committee reminds the State party of its obligation to ensure that all persons in its jurisdiction enjoy the minimum essential levels of each of the rights in the Covenant, including the rights to food, housing, health, water and sanitation. The Committee urges the State party to:**

(a) **Refrain from making access to food, water and housing conditional on an individual's willingness to return to his or her country of origin;**

(b) **Put in place a comprehensive strategy to ensure that everyone, including undocumented migrants, enjoy the minimum essential levels of all Covenant rights and ensure it is supported by adequate funding.**

41. **The Committee reminds the State party of its statement on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1) and its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Homelessness

42. The Committee is concerned about the significant rise in homelessness, in particular among marginalized and disadvantaged individuals and groups, in the State party (art. 11).

43. **The Committee urges the State party to investigate the root causes of homelessness and recommends that it take all necessary measures, including securing affordable social housing, in particular for those marginalized and disadvantaged, and allocating appropriate funds to local municipalities. In that respect, the Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing.**

Sexual and reproductive health

44. The Committee notes that the legislation on abortion in Sint Maarten, which prohibits abortion in all circumstances, is under review, with the aim of decriminalization. However, the Committee regrets that the delegation could not provide a time frame for the review (art. 12).

45. **The Committee urges the State party to expeditiously adopt a legislative framework on abortion in Sint Maarten that complies with article 12 of the Covenant and ensure that services, goods, facilities and information on sexual and reproductive health are available, accessible, acceptable and of high quality for all people in Sint Maarten. The Committee refers to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

Access to health for migrants, refugees and asylum seekers

46. The Committee is concerned that the decision to abolish subsidies for interpreter services in health-care facilities has an adverse impact on migrants' access to health

services. The Committee is particularly concerned over the implications of this measure for obtaining informed consent to medical treatment (arts. 2 and 12).

47. **The Committee urges the State party to reconsider its decision not to fund interpreter services in health-care facilities and to ensure that all persons in its territory enjoy access to health services without discrimination. The Committee reminds the State party of its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

Intersex children

48. The Committee is concerned that the State party's practice of early surgery and medical interventions on intersex children, which are not necessary for physical health and alters their sex characteristics, do not respect their right to free, prior and informed consent (art. 12).

49. **The Committee recommends that the State party review the practice of early surgery and medical interventions on intersex children, in order to make sure that they are mature enough to be consulted on their preferred treatments on the basis of their informed choices and consent.**

Education

50. The Committee is concerned about segregation in a large number of schools and the consequent inequalities in educational attainment, especially for children belonging to ethnic minorities (art. 13).

51. **The Committee recommends that the State party take all necessary measures to reduce segregation and attainment gaps by investing more resources in education for children from ethnic minorities, including increasing the number of qualified teachers and adequate education facilities for those groups.**

Inclusive education for children with disabilities

52. While the Committee takes note of the adoption of the Appropriate Education Act in 2014 and the agreement between municipalities and the regional cooperation boards in June 2016 to reduce school dropout for children with disabilities, it regrets that the Act does not provide those children with a right to be included in mainstream education, nor a right to quality education. That results in many children with disabilities being almost automatically referred to schools for special education and both mainstream and special schools are often unable to provide tailored educational support. The Committee is further concerned that a considerable number of children with disabilities are officially exempted from school attendance (arts. 13 and 14).

53. **The Committee recommends that the State party closely monitor the effects of the legislative and administrative changes with regard to ensuring the right to education for children with disabilities and decrease the school dropout rate. It also requests that in its next periodic report the State party provide statistical data on educational enrolment and the school dropout rates for children with disabilities, including the type of school and length of education, as well as the age, sex and ethnic background of children with disabilities.**

Cultural rights

54. While noting the ongoing measures to adopt educational curricula to reflect the local history and cultures of Aruba, Curaçao and Sint Maarten and use native languages for instruction in schools, the Committee remains concerned that the measures have not been effective and that opportunities for children to study in the local languages are scarce, leaving children whose mother tongue is not Dutch at a disadvantage (art. 15).

55. **The Committee recommends that the State party increases its efforts to ensure that local history and cultures are included in the school curricula and that opportunities to study in the local languages are provided in regions where the local languages are traditionally spoken, including at university level. The Committee**

reminds the State party of its general comment No. 21 (2009) on the right of everyone to take part in cultural life, in which it stated that education must be culturally appropriate and enable children to develop their personality and cultural identity, and to learn and understand the cultural values and practices of the communities to which they belong, as well as those of other communities and societies.

D. Other recommendations

56. While noting the steps taken by the State party towards the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Committee encourages the State party to conclude the ratification process as soon as possible. It further invites the State party to consider recognizing the competence of the Committee under article 11 of the Optional Protocol.

57. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

58. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Sustainable Development Agenda at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

59. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

60. In the light of the follow-up to the concluding observations procedure adopted by the Committee, the State party is requested to provide, within 18 months of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 8, 12 and 40 (a) above.

61. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society at national, provincial and territorial levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to continue its engagement with the Netherlands Institute for Human Rights, non-governmental organizations and other members of civil society throughout the entire reporting process under the Covenant, including the preparation of the next periodic report and the implementation of the present concluding observations.

62. The Committee requests the State party to submit its seventh periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 30 June 2022. It also invites the State party to update its common core document, as necessary, and in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).